STATEMENT OF TDC ENERGY LLC

ON THE MMS POTENTIALLY AMENDING REGULATIONS TO ENSURE THAT PIPELINES TRANSPORTING OIL OR GAS UNDER PERMITS, LICENSES, EASEMENTS OR RIGHTS-OF-WAY ON OR ACROSS THE OUTER CONTINENTAL SHELF "PROVIDE OPEN AND NON-DISCRIMINATORY ACCESS TO BOTH OWNER AND NON-OWNER SHIPPERS" AS REQUIRED UNDER SECTION 5(f) OF THE OUTER CONTINENTAL SHELF LANDS ACT

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The Gulf of Mexico contains thousands of pipelines, with various technical names and nicknames such as "lateral line", "flow line", "jumper", "trunk line" or "mainline" to connect the platforms in the Gulf to the shoreline. A transportation network is comprised of these multiple segments of pipeline that connect the platform to the shoreline. Because of the complexity of the pipeline system and importance to the economy in transporting oil and gas to end users, the United States Government has several requirements and regulations governing the installation, operation, and removal of these networks.

Prior to construction, these "transportation" systems must get approval from the Federal Energy Regulatory Commission ("FERC"). Additionally, pipeline companies must obtain a Certificate of Public Convenience from FERC pursuant to The Natural Gas Act, specifically Title 15 CFR §717b (a) and Title 18 CFR §157. Furthermore, these pipeline companies must file their tariff with FERC for approval under The Natural Gas Act Title 15 CFR §717c (c) and Title 18 CFR §154. The amount of the tariff approved is to cover the expenses of constructing, operating, maintaining and abandoning the pipeline. A pipeline company can request FERC for a tariff adjustment only in certain circumstances such as the sale of a pipeline company or an increase in pipeline operating expenses.

A series of pipeline segments that connect platforms and/or wells to a facility that processes, compresses, or alters the gas is considered a “gathering” system. Gathering systems are not regulated by FERC or any other government entity at this time. Unfortunately for the oil and gas producers and ultimately the public, the definition of “gathering” is not clear and concise and, in fact, is subject to varying personal opinions and perspectives.

Just as a company cannot piece meal its pipeline construction in order to avoid permitting costs and regulations, a company cannot abandon segments of its pipeline in order to avoid certain regulations. Pipeline companies cannot simply label its lines as "transmission" lines in the beginning to be able to charge users a transportation fee in order to cover the cost of construction and then turn around and declare its lines "gathering" in the end to avoid FERC jurisdiction and charge even higher transportation rates just because the companies want to avoid abandonment costs and/or make an unconscionable profit. When pipelines are constructed, the pipeline company applies to FERC for approval to charge transportation fees in order to cover the construction, operation and abandonment costs. A pipeline company cannot be allowed to sell a pipeline, long after the construction, operation and abandonment costs have been recovered through the tariff, to another company who will want to recoup the monies spent purchasing, operating and abandoning the pipeline through a new charge. Ultimately, the users end up paying not only for the initial construction, operation and abandonment, but also for the re-sale of the pipeline. This is absolutely unfair, unreasonable and an inherent restriction to commerce. Clearly, a pipeline company could not sell an entire transportation system under the previous example because of the NGA. Instead, companies are attempting to evade NGA and FERC authority by selling smaller portions of the transportation system.

TDC Energy LLC ("TDC") has been confronted with a frustrating situation that ultimately affects its profits and royalties it pays. TDC is a small independent oil and gas company that targets marginal gas producing properties. The frustrating situation mentioned above began when a major pipeline company sold one segment in its FERC certificated transportation system to an apparently non-affiliated small pipeline company.

The major pipeline company sold a 7.2 mile, 10¾ inch, "lateral" line. The "lateral" line was constructed in 1985. This lateral connects to a 2.9-mile producer-owned line that extends from TDC's platform. TDC's gas travels through approximately 6 miles of the lateral and then enters the major pipeline company's 24-inch "main line" or "trunk line". The distance between our platform and our market has not changed, only the cost in getting it there. TDC is now subject to the small pipeline company's high transportation charges. To refuse to pay this obscene fee is assurance that the producer's natural gas, which is considered interstate commerce since it is produced on the Outer Continental Shelf (OCS) {See NGPA Title 15 CFR §3301 (18)(i)}, will enter the main pipeline company's FERC certificated "transportation" system as un-authorized gas and will not be allocated to the producer. This, in fact, did happen to another producer subject to the very same frustrating situation as TDC. TDC as well as this other producer have been threatened, bullied, strong-armed, and extorted by this small pipeline company. This small pipeline company resorted to employing a liaison, which was already employed by TDC, to persuade TDC into paying the ridicules charge. The liaison suggested TDC should pay his good friend, that $0.35/mmbtu was a fair price and that FERC did not have any jurisdiction at all over this segment of pipeline. Originally the pipeline company demanded $0.50/mmbtu for transportation. Both the pipeline company and the liaison suggested $0.35/mmbtu. The pipeline company actually contacted TDC's financiers on the day before closing in order to try to prevent the financiers from closing due to the threat of shutting in our production. The pipeline company suggested that TDC pay an override in lieu of paying the transportation fee. Ultimately TDC had to pay $0.25/mmbtu for the transportation of its gas.

Needless to say, TDC decided to seek help with this situation. After contacting several federal and state agencies, TDC was assured that FERC was the governmental body to help us. After going through the hotline process, the subject pipeline was deemed "most likely FERC jurisdictional". However, before TDC could make a formal complaint, some people at FERC wanted to view the situation from the small pipeline company's perspective. FERC had the small pipeline company go through the hotline process, which resulted in an opinion that the subject pipeline is "most likely gathering and not subject to FERC". As mentioned earlier, the definition of "gathering" is not clear and concise.

FERC is trying to clearly define "gathering" at the present time. A public meeting was held in September 2003 in order to get the public's views and comments on the definition of "gathering". The court's decision in October 2003 that limited FERC's authority and put the responsibility of assuring open access upon the MMS is another factor that affects the outcome of TDC's situation. The aforementioned hotline calls, FERC's public meeting and the court decision, have resulted in an ambiguity to TDC and its position.

The above is just a brief and oversimplified description of our situation. There are many other factors involved in the situation that are of no concern to the MMS at this time. However, the above description is plain and clear enough for the MMS to see that the public has a need for the MMS to get involved. Clearly the MMS or FERC or both government bodies need to use the laws and definitions that do exist to protect the public's interest. At the present time the public, as well as the government, is losing money because transportation fees are deductible when calculating royalties. TDC is also losing a profit that could have otherwise been used to explore for or produce more natural gas for the ultimate benefit of the industry and the public.

This is an extremely serious situation especially considering the fact that there are thousands of pipeline segments in the Gulf of Mexico that could be purchased by non-affiliated pipeline companies. The FERC certificated pipeline companies have the means to cover the costs, and insurance requirements associated with pipeline operations and potential accidents. These potential non-affiliated companies will not be regulated by any government agency to require the appropriate insurance coverage or operational costs for operations or accidents in the future.

TDC continues to hope that either the MMS or FERC will draft the regulations and procedures to ultimately clarify this gray area. No company should have to go through the trials and tribulations that TDC has encountered with this situation.

Respectfully submitted,

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